

Internal Revenue Service  
District Director

Department of the Treasury

Post Office Box 1680, GPO  
Brooklyn, NY 11202

Date: **JAN 3 1992**

Person to Contact:  
[REDACTED]

Contact Telephone Number:  
[REDACTED]

Refer Reply to:  
[REDACTED]

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] in [REDACTED].

The purposes for which the corporation is formed are as follows:

"To establish, develop, maintain, manage and operate homes and shelters for the mentally ill, mentally retarded, physically ill, homeless and people with special needs; to consult with and train others for the establishment, development, maintenance, management and operation of homes and shelters for the mentally ill, mentally retarded, physically ill, homeless and people with special needs.

To establish, develop, maintain, manage and operate low income and government subsidized housing and cooperative housing for the poor; to consult with and train others for the establishment, development, maintenance, management and operation of low income and government subsidized housing and cooperative housing for the poor."

The information submitted with your Application Form 1023 indicates that your primary activity consists of providing consulting services on a fee for service basis. You have stated that you provide such services only to governmental bodies, governmental agencies, other charities and private individuals who are providing housing or other services for the indigent, low income, mentally ill, mentally retarded and other individuals with special needs.

Your organization is currently providing the consulting services at a flat hourly rate of \$[REDACTED] to \$[REDACTED], subject to negotiation. Since its inception, your organization has provided consultative services to various governmental agencies, private organizations and individuals regarding their proposed housing projects. The financial data that you submitted with your Form 1023 indicates that your organizations revenue is derived almost exclusively from contract revenue attributable to your consulting services. For the fiscal year ending [REDACTED], revenue from consulting services constituted approximately [REDACTED]% of your total support. Proposed budgets for the fiscal years ending [REDACTED] and [REDACTED] reveal that revenue from consulting services is projected to constitute approximately [REDACTED]% and [REDACTED]% of total support respectively. You have stated that your organization does not have a fundraising program and that no such program is planned. Consulting income projected for the [REDACTED] and [REDACTED] fiscal years is anticipated to meet all expenses. Consulting income for the year ended [REDACTED] was sufficient to meet all operating expenses and net income for the year amounted to \$[REDACTED].

Your organizations expenses for the fiscal year ended [REDACTED] includes disbursements for salary and benefits, travel, professional fees, nominal contributions, office supplies and equipment and other administrative expenses. Budgets for the [REDACTED] and [REDACTED] fiscal years reflect similar types of expenditures. You have stated that amounts shown as salary expense (compensation of officers) are all amounts paid to [REDACTED] for services rendered. [REDACTED] is identified as the sole employee. As the sole officer and director of the corporation, [REDACTED] is in a position to determine her compensation for services rendered. The financial data, both actual and projected, submitted with with Form 1023 indicates that the compensation to be paid to [REDACTED] will increase in proportion to the anticipated increase in revenue.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

In Revenue Ruling 71-529, 1971 - 2 C.B. 234, an organization providing investment management services to other exempt organizations at substantially below cost was held to be exempt under section 501(c)(3) of the Code.

In Revenue Ruling 72-369, 1972 - 2 C.B. 245, exemption was denied to an organization formed to provide managerial and consulting services at cost for unrelated tax-exempt organizations for the purpose of improving administration of their charitable programs. The ruling states that the furnishing of services at cost lacks the donative element necessary to classify the activities as charitable and therefore, the organization is not operated exclusively for exempt purposes under section 501(c)(3).

In B.S.W. Group, Inc. v. Commissioner, 70 TC 352, Dec. 35, 175, the Tax Court held that a corporation that planned on offering consulting services for a fee to nonprofit, limited resource organizations engaged in various rural-related activities was not entitled to tax-exempt status because it did not operate exclusively for charitable, educational or other exempt purposes within the purview of section 501(c)(3).

Your organization can be distinguished from the organization described in Rev. Rul. 71-529. That organization provided services at substantially below cost.

However, your activities are similar to the activities of the organizations described in Rev. Rul. 72-369 and B.S.W. Group, Inc. in that you are essentially providing consulting services on an at cost basis. The fact that you are organized on a nonprofit basis and provide services primarily for nonprofit and exempt organizations is not determinative of exempt status. Providing consulting services on a regular basis for a fee is characteristic of a trade or business ordinarily carried on for profit. In addition, you have not demonstrated that your services are not in competition with commercial businesses such as consulting firms. Your organization is primarily conducting an activity indistinguishable from an ordinary commercial enterprise.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

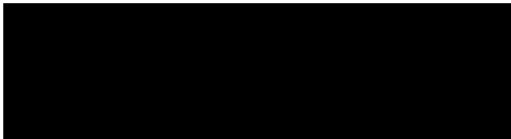
If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,



District Director

cc



Enclosure: Publication 892